IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 508/2001
(Dilip Kothari Vs. State of Rajasthan & Ors.)

Date of Order : 12/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. J.P.Chhangani for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. H.M.Saraswat for the non-petitioners No. 2 to 5.

BY THE COURT:-

Reportable

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner seeks quashing of FIR No. 115/2001, Police Station, Sadar Bazar, Division-A, Jodhpur qua the petitioner for the offences under Sections 420, 463, 465, 467 and 120-B IPC.

I have heard learned counsel for the parties. Carefully gone through the FIR and the Police Investigation Diary.

The facts and circumstances giving rise to the instant petition are that the non-petitioners No. 2 to 5 (for short 'the complainants' hereinafter) purchased land bearing Khasra No. 130 in village Mogada, Tehsil Luni, District Jodhpur which was

titled as Plot No.7 and divided in four plots, by a registered sale deed executed by one Vinod Kashyap who is power of attorney holder of Mohd.Asif and Mohd Arif. After purchase of the said four plots which were originally plot No.7, the complainants came to know that the said plot No.7 has already been sold by Mohd. Asif and Mohd. Arif to present petitioner Dilip Kothari by a registered sale deed dated 4.9.96, whereas the power of attorney holder of Mohd. Asif and Mohd. Arif i.e. Vijay Kashyap executed the sale deed in respect of very plot by dividing in four plots on 24.6.1997 much after transferring the plot in favour of present petitioner. The allegation against the present petitioner is that he is a broker in the property dealings and he had knowledge that the said plot has already been purchased by him by registered sale deed dated 4.9.96, yet he allowed the power of attorney holder of Mohd. Asif and Mohd. Arif to transfer the plots in favour of the complainants by registered sale deed dated 24.6.1997. The matter has been investigated by the police and after investigation the police came to the conclusion that no offence of forging any document is made out, however, offence of cheating punishable under Section 420 IPC is made out against Mohd. Asif and Mohd. Arif who alleged to have sold the plots to the petitioner and thereafter through their power of attorney Vinod Kashyap sold the very plots to the complainants on 24.6.97.

On careful perusal of the Police Investigation Diary, it prima-facie appears that the plot No.7 bearing Khasra No. 130 in Village Mogada, was originally owned by present petitioner Dilip Kothari who sold it to one Goverdhan Soni on 24.1.94 by registered sale deed. Goverdhan Soni subsequently sold the plot to Mohd. Asif and Mohd. Arif on 21.9.94 almost after nine months from the purchase. After having purchased the said plot from Goverdhan Soni, purchaser Mohd. Asif and Mohd. Arif entered into an agreement to sale dated 6.7.95 and by an agreement to sell, sold the said plot to one Vikram Jeet Singh. On the very day, a power of attorney was also executed by Mohd. Asif and Mohd. Arif with regard to the very plot in favour of Vijay Kashyap who is said to be man of Vikram Jeet Singh. Without revoking the agreement, Mohd. Asif and Mohd. Arif sold the said plot to the present petitioner by a registered sale deed dated 4.9.96 and by virtue of sale deed dated 4.9.96, petitioner Dilip Kothari claims to be the owner of the plot in question. It appears that petitioner Dilip Kothari filed a suit in the Civil Court against the complainants restraining them to interfere in his peaceful possession over the plot in question and an interim order has been passed by the Civil Court in respect of land in question for maintaining status-quo.

It is contended by learned counsel for the petitioner that on the date of sell of said plots in favour of complainants by

power of attorney holder of Mohd. Asif and Mohd. Arif namely Vijay Kumar Kashypa, the petitioner was nowhere in the picture and therefore, it cannot be said that the petitioner induced the complainants with the fraudulent and dishonest intention to purchase the said plot from the power of attorney holder of Mohd. Asif and Mohd. Arif. Learned counsel for the petitioner has relied on decisions of Hon'ble Supreme Court in S.W.Palanitkar Vs. State of Bihar (2002) 1 SCC 241, in Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others (1998) 5 SCC 749 and a recent decision of Hon'ble Supreme Court in M/s Indian Oil Corporation Vs. M/s NEPC India Ltd. and Ors. AIR 2006 SC 2780.

In M/s Indian Oil Corporation Vs. M/s NEPC India Ltd. and Ors. (supra) Hon'ble Supreme Court held that a growing tendency in business circles to convert purely civil disputes into criminal cases is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/ families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which

do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

In S.W. Palanitkar Vs. State of Bihar (Supra), the Apex Court held that it is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.

In G.V.Rao Vs. L.H.V. Prasad (2000) 3 SCC 693 Hon'ble Supreme Court held that Section 415 has two parts. While in the first part, the person must “dishonestly” or “fraudulently” induce the complainant to deliver any property; the second part need not necessarily relate to property. In the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional.

In Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and others (1998) 5 SCC 749, Hon'ble Supreme Court held that no doubt the Magistrate can discharge the accused at

any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial.

Learned counsel appearing for the complainants and the learned public prosecutors submit that the petitioner being a broker in property dealings having knowledge that he had already purchased the said plot in question from Mohd. Asif and Mohd. Arif, yet pursuaded the complainants through other brokers to purchase the said plot and therefore, he was conspirator to the act of cheating.

Learned counsel for the complainants has relied on decisions of Hon'ble Supreme Court in Kamla Devi Agarwal Vs. State of West Bengal 2002 (1) CCC 121 (S.C.), in Rajesh Bajaj Vs. State NCT of Delhi and others AIR 1999 SC 1216 and in Vitoori Pradeep Kumar Vs. Kaisula Dharmaiah and others 2001 Cri. L.J. 4948.

In Kamla Devi Agarwal Vs. State of West Bengal (supra) Hon'ble Supreme Court held that criminal proceedings

cannot be quashed only because the respondents had filed a civil suit with respect to the documents. In a criminal Court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil Court. It was further observed by their Lordships as under :-

> "We have already noticed that the nature and scope of civil and criminal proceedings and the standard of proof required in both matters is different and distinct. Whereas in civil proceedings the matter can be decided on the basis of probabilities, the criminal case has to be decided by adopting the standard of proof of "beyond reasonable doubt". A Constitution Bench of this Court, dealing with the similar circumstances, in M.S. Sheriff and Anr. Vs. State of Madras and Ors. AIR 1954 SC 397 held that where civil and criminal cases are pending, precedence shall be given to criminal proceedings."

In Rajesh Bajaj Vs. State of NCT of Delhi (supra) the Apex Court held that it is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at the stage of investigation. If factual foundation for the offence has been laid in the complaint the Court should not hasten to quash

criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence.

In Vitoori Pradeep Kumar Vs. Kaisula Darmaiah and ors (supra) Hon'ble Supreme Court held that we see no justification on the part of the High Court under such circumstances to direct that the criminal proceedings should be quashed. Moreso, there is an earlier order of the High Court itself and in that view of the matter the order of the High Court quashing criminal proceeding was set aside.

Keeping in view the law propounded by Hon'ble Supreme Court in the decisions referred herein above, in my view, the very essential ingredients of the offence of cheating or criminal conspiracy are not at all made out from the complaint and the investigation ensued thereunder. The essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both.

In Hira Lal Hari Lal Bhagwati Vs. CBI 2003 SCC (Cri) 1121 Hon'ble Supreme Court held that to bring home the charge of conspiracy within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act.

In P.K.Narayanan Vs. State of Kerala (1995) 1 SCC 142, Hon'ble Supreme Court held that the ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. But if those circumstances are compatible also with the innocence of the accused persons then it cannot be held that the prosecution has successfully established its case. Even if some acts are proved to have been committed it must be clear that they were so committed in pursance of an agreement made between the

accused who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. Hon'ble Supreme Court further held that an offence of conspiracy cannot be deed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence.

In whole of the complaint as also the investigation ensued thereunder, in my view, no such essential ingredient to construe the offence of criminal conspiracy against the present petitioner is made out and therefore, to allow the FIR and the investigation thereunder qua the present petitioner is nothing but an abuse of the process of the Court.

In the result, the petition is allowed. FIR No.115/01 Police Station Sadar Bazar Division 'A", Jodhpur and the investigation ensued thereunder, qua present petitioner Dilip Kothari stand quashed. However, it will be open for the investigating agency to proceed against the other co-accused named in the FIR namely Mohd. Asif and Mohd. Arif. Stay petition also stands disposed of.

(H.R.PANWAR),J.

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